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9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

11 **'13CV0945 MMANLS**

12 UNITED STATES JUSTICE
13 FOUNDATION,

14 Petitioner,

15 v.

16 SEAN BURNS, in his capacity as a
17 Veterans Benefits Administration
18 FOIA Officer; U.S. DEPARTMENT
19 OF VETERANS AFFAIRS;
20 VETERANS BENEFITS
21 ADMINISTRATION; and DOES 1
22 through 100,

23 Respondents.

**PETITION TO COMPEL
COMPLIANCE WITH
FREEDOM OF INFORMATION
ACT REQUEST**

24 **COMPLAINT**

25 Petitioner UNITED STATES JUSTICE FOUNDATION ("USJF") brings
26 this action against Respondents SEAN BURNS, in his capacity as a Veterans
27 Benefits Administration FOIA Officer; U.S. DEPARTMENT OF VETERANS
28 AFFAIRS; and the VETERANS BENEFITS ADMINISTRATION

1 (“RESPONDENTS”). USJF brings this action in order to compel
2 RESPONDENTS’ compliance with the Freedom of Information Act, 5 U.S.C. §
3 552 (“FOIA”). As grounds thereof, USJF alleges as follows:
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5 **JURISDICTION AND VENUE**

6 1. The Court has jurisdiction over this action pursuant to 5 U.S.C. §
7 552(a)(4)(B) and 28 U.S.C. § 1331.
8

9 2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).
10

11 **PARTIES**

12 3. USJF is a nonprofit, public interest, legal action organization,
13 dedicated to instruct, inform, litigate, and educate the public on significant legal
14 issues confronting the United States. Founded in 1979 by attorneys seeking to
15 advance the conservative viewpoint in the judicial arena, USJF has since submitted
16 testimony to the U.S. Senate on virtually every U.S. Supreme Court appointee,
17 sponsored conferences on a variety of important legal issues, published studies and
18 reports on topical issues, and litigated numerous Constitutional cases, including
19 multiple cases up to the United States Supreme Court. USJF seeks to promote
20 integrity, transparency, and accountability in government, as well as fidelity to the
21 rule of law. In furtherance of its public interest mission, USJF regularly requests
22 access to the public records of federal, state, and local government agencies,
23 entities, and offices, and disseminates its findings to the public.
24

25 4. RESPONDENTS consist of an agency of the United States
26
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1 Government and one of its officers. RESPONDENTS are headquartered at 810
2 Vermont Avenue, NW, (20M33) VACO, Washington, DC 20420.

3
4 RESPONDENTS have possession, custody, and control of records to which
5 PETITIONER seeks access.

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7 **STATEMENT OF FACTS**

8 5. On February 25, 2013, USJF submitted, via email pursuant to the
9 instructions on RESPONDENTS' website, two different FOIA requests to
10 RESPONDENTS seeking records regarding "Veterans Benefits Administration
11 rules, regulations, and criteria for making determinations of incompetency due to a
12 physical or mental condition of a benefit recipient; and, all Veterans Benefits
13 Administration rules, regulations, and criteria for appointing of fiduciaries to
14 manage VA payment." (*See* "Declaration of Nathaniel Oleson"). The requests also
15 sought "copies of all rules, regulations and criteria used by the Veterans Benefits
16 Administration to determine that a veteran found incompetent for any reason can be
17 prohibited from purchasing or possessing a firearm." The FOIA requests stated that
18 USJF was requesting records with a date range from January 1, 2008 through
19 February 21, 2013.
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24 6. Pursuant to 5 U.S.C. § 552(a)(6)(A), RESPONDENTS were required
25 to respond to USJF's FOIA request within twenty (20) working days, or by March
26 25, 2013.
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28 7. As of the filing of this Petition, RESPONDENTS have failed to

1 respond in any way to either of USJF's FOIA requests. RESPONDENTS have
2 failed to produce any records responsive to the request or demonstrate that
3 responsive records are exempt from production. RESPONDENT has also failed to
4 indicate whether or when any responsive records will be produced.
5

6 8. Because RESPONDENTS failed to comply with the time limit set
7 forth in U.S.C. § 552(a)(6)(A), USJF is deemed to have exhausted any and all
8 administrative remedies with respect to its FOIA request, pursuant to U.S.C. §
9 552(a)(6)(C).
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11

12 COUNT 1

13 (Violation of FOIA, 5 U.S.C. § 552)

14 9. USJF realleges paragraphs 1 through 8 as if fully stated herein.
15

16 10. RESPONDENTS are unlawfully withholding records requested by
17 USJF pursuant to FOIA.
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19 11. USJF is being irreparably harmed by reason of RESPONDENTS'
20 unlawful withholding of requested records, and USJF will continue to be
21 irreparably harmed unless RESPONDENTS are compelled to conform its conduct
22 to the requirements of law.
23

24 PRAYER

25 WHEREFORE, USJF respectfully requests that the Court: (1) order
26 RESPONDENTS to conduct search for any and all responsive records to USJF's
27 FOIA request and demonstrate that it employed search methods reasonably likely to
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1 lead to the discovery of records responsive to USJF's FOIA request; (2) order
2 RESPONDENT to produce, by a date certain, any and all non-exempt records
3 responsive to USJF's FOIA request and a *Vaughn* index of any responsive records
4 withheld under claim of exemption; (3) enjoin RESPONDENTS from continuing to
5 withhold any and all non-exempt records responsive to USJF's FOIA request; (4)
6 grant USJF an award of attorneys' fees and other litigation costs reasonably
7 incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant USJF such
8 other relief as the Court deems just and proper.

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12 Dated: April 18, 2013

Respectfully submitted,

13 UNITED STATES JUSTICE FOUNDATION

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15
16 s/ Nathaniel Oleson
17 NATHANIEL J. OLESON

18 *Attorney for Petitioner*
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